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OFFICE OF PETITIONS

ON PETITION

In re Application of
Alexander K. Mills et al.
Application No. 10/008,245
Filed: November 7, 2001
Attorney Docket No. : WT-02-004C

This is a decision on the renewed petition filed July 11, 2003 under 37 CFR 1.78(a)(3), and the amendment submitted June 19, 2003 to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed non-provisional Application No. 09/684,104 filed October 6, 2000.¹

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;²

(2) the surcharge set forth in §1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on November 7, 2001, and was copending with

¹A petition under 37 CFR 1.78(a)(3) was filed May 15, 2003 and dismissed in a decision dated June 19, 2003. The petition filed May 15, 2003 did not include an amendment and the petition fees submitted were insufficient.

²Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS)) to each such prior filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to others related applications may be made when appropriate (see § 1.14).


the above-noted, prior filed nonprovisional application, at the time of filing, for which priority is claimed. A reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title which was filed concurrently with the instant petition under 37 CFR 1.78(a)(3).

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(2). Also, the reference to the prior-filed nonprovisional was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. § 120. Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(3) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 120, the petition to accept an unintentionally delayed claim of benefit to prior-filed nonprovisional Application no. 09/827,096 is granted as of the date of filing the petition.

The fee required by 37 CFR 1.78(a)(3) has been set at \$1300, effective January 1, 2003. \$1240 was submitted May 19, 2003 and the balance of \$60 has been submitted with the renewed petition.

Any inquiries concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball in the Office of Petitions at (703) 305-4497.

This application is being forwarded to Technology Center Art Unit 3736 for processing the amendment filed June 19, 2003 and for consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(3) for the benefit of the above-noted, prior-filed nonprovisional application.


Beverly Flanagan
Supervisory Petitions Examiner
Office of Petitions